

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE TORRES GARCIA,

Petitioner,

v.

JEHOVA PUTIN, et al.,

Respondents.

No. 1:21-cv-00817-NONE-JLT (HC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS, DISMISSING  
PETITION FOR WRIT OF HABEAS  
CORPUS, DIRECTING CLERK OF COURT  
TO ASSIGN DISTRICT JUDGE FOR  
PURPOSE OF CLOSING CASE AND THEN  
CLOSE CASE AND DECLINING TO ISSUE  
CERTIFICATE OF APPEALABILITY

(Doc. No. 9)

Petitioner is a state prisoner proceeding in propria persona with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On July 28, 2021, the assigned magistrate judge issued findings and recommendations recommending that the pending petition be dismissed due to the petitioner's failure to comply with court orders and failure to prosecute. (Doc. No. 9.) The findings and recommendations were served upon all parties and contained notice that any objections were to be filed within ten days from the date of service of that order. To date, no party has filed objections.

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), the court has conducted a de novo review of the case. Having carefully reviewed the entire file, the court concludes that the findings and recommendations are supported by the record and proper analysis.

1           In addition, the court declines to issue a certificate of appealability. A state prisoner  
2 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of  
3 his petition, and an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537  
4 U.S. 322, 335-336 (2003); *see also* 28 U.S.C. § 2253. If a court denies a petitioner's petition, the  
5 court may only issue a certificate of appealability when a petitioner makes a substantial showing  
6 of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To make a substantial showing,  
7 the petitioner must establish that "reasonable jurists could debate whether (or, for that matter,  
8 agree that) the petition should have been resolved in a different manner or that the issues  
9 presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529  
10 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

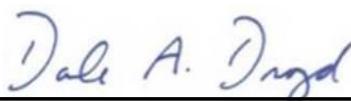
11           In the present case, the court finds that petitioner has not made the required substantial  
12 showing of the denial of a constitutional right to justify the issuance of a certificate of  
13 appealability. Reasonable jurists would not find the court's determination that petitioner is not  
14 entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to  
15 proceed further. Thus, the court DECLINES to issue a certificate of appealability.

16           Accordingly, the court orders as follows:

- 17           1. The findings and recommendations, filed July 28, 2021 (Doc. No. 9), are  
18                 **ADOPTED IN FULL;**
- 19           2. The petition for writ of habeas corpus is DISMISSED;
- 20           3. The Clerk of the Court is DIRECTED to assign a district judge to this case for the  
21                 purpose of closing the case and then to close the case; and
- 22           4. The court DECLINES to issue a certificate of appealability.

23 IT IS SO ORDERED.

24           Dated: October 13, 2021

  
\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

26  
27  
28